

Article 3.—WATERSHED DAM CONSTRUCTION PROGRAM

11-3-1. Definitions. (a) “Appurtenant works” means the following:

- (1) The primary spillway;
- (2) other conduits through a dam;
- (3) valves;
- (4) the auxiliary spillway;
- (5) the service spillway;
- (6) the stilling basin;
- (7) any constructed outlet channel;
- (8) all dikes and berms designed and constructed to protect a dam;
- (9) drains; and
- (10) all other features constructed to protect or operate a dam.

(b) “Breach” means a gap or an opening in an embankment or auxiliary spillway that results in the complete loss of reservoir storage.

(c) “Breach analysis” means an analysis performed by a licensed professional engineer to determine the areas that would be inundated if a dam failed.

(d) “Chief engineer” means the chief engineer, division of water resources, department of agriculture.

(e) “Commission” means the state conservation commission.

(f) “Decommissioning” means the removal of a dam, the appurtenant works, and the embankment.

(g) “Detention dam” means a single-purpose dam designed for the temporary storage of floodwaters and for the controlled release of those floodwaters.

(h) “District” means a watershed district, drainage district, or any other special-purpose district that has been organized and incorporated according to appropriate statutes and has the power to levy taxes and the power of eminent domain.

(i) “Embankment” means a dam's principal barrier made of earth or rock fill or a combination of earth and rock fill.

(j) “General plan” means a preliminary engineering report describing the characteristics of the project area, and the nature and methods of dealing with the soil and water problems within the project area. The general plan shall include maps, descriptions, and other data as necessary for the location, identification, and establishment of the scope of the work to be undertaken and any other relevant data and information that the chief engineer may require.

(k) “Grade stabilization dam” means a structure designed to control the erosion of a watercourse.

(l) “Hazard” means any situation that creates the potential for adverse consequences that may include loss of life, property damage, and any other adverse impact.

(m) “Inundation area” means the area below a dam that would be inundated with water as determined by conducting a breach analysis.

(n) “Operation and maintenance” means the actions or upkeep, or both, necessary for a dam to continue to function properly, including the following:

- (1) Woody vegetation control;
- (2) grass seeding;

- (3) burrowing animal control;
- (4) the repair of minor erosion, cracks, animal burrows, and minor settling;
- (5) the care of pipes, piezometers, drains, valves, gates, and other mechanical devices;
- (6) the replenishment and proper placement of riprap;
- (7) the removal of debris from spillways; and
- (8) any other actions necessary for upkeep.
- (o) "Permit" means the formal document issued by the chief engineer or other issuing agency to the district authorizing the construction or rehabilitation of a project.
- (p) "Project" means the construction or rehabilitation of a detention dam or grade stabilization dam.
- (q) "Rehabilitation" means any work, except work required due to inadequate operation and maintenance, to extend the service life of a dam and to meet the applicable safety and performance standards.
- (r) "Structure condition report worksheet" means a current physical assessment of a rehabilitation project on a form prescribed by the commission. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-2. Application for construction. (a) Any organized watershed district, drainage district, or other special-purpose district interested in state assistance may apply for state cost-share assistance funds appropriated for the construction of detention dams and grade stabilization dams. Each application for state assistance shall be submitted on a form supplied by the commission. All applications shall be due at the commission office on or before April 1 to be included in the evaluation process for possible funding during the next fiscal year.

(b) Each district submitting an application shall employ or acquire the services of a person knowledgeable of watershed dam construction administrative procedures, who shall be known as the contracting officer for the proposed site.

(c) Each recipient of state cost-share assistance for construction shall submit an inundation area map before the final payment is made. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

11-3-3. Permit to construct or rehabilitate. Before the allocation of funds to any project and before any district advertises for bids, the district shall submit the following to the commission:

(a) A copy of the permit to construct or rehabilitate, as issued by the chief engineer; and

(b) an updated general plan. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-4. Allocation of funds. (a) An evaluation of applications shall be made by the commission to determine the priority ranking for all proposed projects. In addition, an amount that is contingent on appropriations shall be determined for projects in each district and other dams as authorized by the legislature.

(b) The maximum cost-share level for construction or rehabilitation costs, including engineering and inspection costs, shall be 80 percent. The maximum annual assistance per structure or district shall be \$120,000, except when uncommitted funds are available after all eligible structures have been funded. These uncommitted funds may be used to provide additional cost-sharing above the maximum limit. Assistance funds shall not be used for easements or administrative costs, except on rehabilitation projects if the commission determines that easements within the inundation area are the most cost-effective alternative.

(c) The standard bidding procedures of the department of administration shall be used in the bidding process for approved applications for state assistance.

(d) Adequate accounting and fiscal records shall be maintained by the district to reflect the receipts and expenditures of all funds of the project.

(e) The district shall submit project documents and relevant information as required by the commission.

(f) The district shall construct or cause the project to be constructed to final completion in accordance with the plans and specifications approved by the chief engineer. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

11-3-5. Contract. (a) Each contract shall be a fund- obligating document and shall include the contractual provisions required by the commission and the state.

(b) Any contract not completed by the end of the fiscal year in which appropriation was made may be extended upon written request. (Authorized by K.S.A. 2-1904, K.S.A. 2004 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2004 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

11-3-6. Partial payments. Partial payments of appropriated funds shall be made to the district no more often than once each month. Each partial payment shall be requested on a form furnished by the commission. All partial payments shall be documented by construction or rehabilitation progress reports. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-7. Notification of completion. (a) The district shall notify the commission and the chief engineer when the district's approved project is complete and ready for final inspection.

(b) The notification to the commission shall include the following:

(1) The date of completion of the project; and

(2) an itemized list of all costs of the following:
(A) Construction or rehabilitation; and
(B) engineering inspections and geological investigations.
(c) The district shall submit a request for final payment of state funds for the project on a form provided by the commission, after the issuance of the certificate of completion by the chief engineer. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-8. Alterations to project plan. Each alteration of or change order regarding any original construction or rehabilitation plan shall require the prior approval of the chief engineer and notification to the commission. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-9. Supplemental application procedures. Each supplemental request of funds for costs of construction or rehabilitation and engineering costs exceeding the approved funding shall be submitted on a form supplied by the commission. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

11-3-10. Inspection. The district shall conduct an annual operation and maintenance inspection of each completed new or rehabilitated state-funded structure and shall file an inspection report on a form provided by the commission. The district shall submit a copy of the inspection report to the commission and chief engineer. The district shall implement corrective maintenance or repair when needed. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

11-3-11. Application for rehabilitation. (a) Any organized watershed district, drainage district, other special-purpose district, or other dam owner as authorized by the legislature that is interested in state assistance may apply for state cost-share assistance funds appropriated for the rehabilitation of detention dams and grade stabilization dams. Each application for state assistance shall be submitted on a form supplied by the commission.

(b) Each applicant shall submit a letter of intent to the commission by July 1 for a specific rehabilitation project to be considered for funding in the next fiscal year. The letter of intent shall include the following:

- (1) A preliminary rehabilitation design;
- (2) a preliminary cost estimate for the rehabilitation;
- (3) a cost estimate for a breach analysis;

- (4) the hazard classification; and
- (5) the structure condition report worksheet.

The chief engineer shall be notified upon commission receipt of all rehabilitation applications.

(c) At the beginning of each fiscal year, each applicant shall be notified of the applicant's priority ranking by the commission. Each applicant with a priority ranking high enough to be selected for possible funding shall complete the detailed design, total cost, and financial assistance funding requirements using forms prescribed by the commission.

(d) The components eligible for financial assistance for the dam and appurtenant works, inundation area delineation, or inundation area easements shall include the following:

- (1) The engineering fees;
- (2) the construction or repair of embankments;
- (3) excavation;
- (4) metal, concrete, and other components;
- (5) breach of a dam;
- (6) establishment of permanent vegetation;
- (7) fencing;
- (8) riprap or filter material;
- (9) decommissioning;
- (10) upgrade of a spillway;
- (11) acquisition of inundation area easements;
- (12) inundation area mapping; and
- (13) any other components that the commission deems necessary.

(e) Each request for financial assistance for any rehabilitation required because of deficient operation and maintenance shall receive the lowest priority for funding.

(Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective March 24, 2006.)

11-3-12. Application for financial assistance for inundation area mapping. (a)

Any organized watershed district, drainage district, other special-purpose district, or other dam owner authorized by the legislature may apply for state financial assistance for inundation area mapping. Each application shall be submitted on a form prescribed by the commission.

(b) Each application for financial assistance for inundation area mapping within a district shall include the following:

- (1) The identification of each person whose services will be employed to complete the map;
- (2) an acknowledgement that the services specified in paragraph (b) (1) will be conducted by a licensed professional engineer; and
- (3) a summary of how the district will use the inundation area map to encourage the prevention of future inundation area development.

(c) Prioritization for funding shall include consideration of the following factors:

(1) The applicant's plan for using the dam inundation map to encourage prevention of future inundation area development;

(2) the amount of funding provided by the district for each inundation area mapping application;

(3) any application that includes a strategic inundation area mapping plan. The plan shall include the district's prioritized mapping completion timelines to address inundation area mapping for all dams in the district; and

(4) other relevant criteria identified by the commission that mitigate hazards associated with watershed dams. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective March 24, 2006.)